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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: MAY 09 2011 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a Swahili teacher/instructor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner asserts that his influence in the field is apparent from the fact that he works as a teacher of students who apply their knowledge outside of the classroom. For the reasons discussed below, the AAO upholds the director's bases of denial. Notably, the petitioner has never explained why his qualifications are not amenable to enumeration on an application for alien employment certification. Beyond the director's decision, the petitioner did not submit the required initial evidence to establish his advanced degree.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A)

that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Eligibility for the Classification

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The petitioner asserts that he holds a Master's degree in Swahili linguistics and a Ph.D. in education. The regulation at 8 C.F.R. § 204.5(k)(3)(i) requires that the petitioner submit his "official academic record" as evidence of a degree. The petitioner submitted his official transcript from [redacted]. The transcript reflects four semesters of graduate credits from the College of Education but does not reflect that the university awarded a degree to the petitioner. The transcript also lists "Previous/Transfer Institutions." This section states that the petitioner received a Bachelor of Education from the [redacted] in 1994 and a Master of Arts from the [redacted] in 2004. The [redacted] transcript, however, is not an official academic record of his education at other institutions.

As evidence of his previous education, the petitioner submitted a "Faculty Provisional Transcript" from the [redacted] stating: "Recommendation: To be awarded Master of Arts in Swahili." This provisional transcript recommending that the university award a Master's degree to the petitioner is not evidence that the university did, in fact, issue the degree. Moreover, the petitioner did not submit an evaluation of this degree explaining the U.S. equivalency of this foreign degree. As such, the petitioner has not documented that his foreign degree, assuming he received it, is a foreign equivalent degree to a U.S. degree above a baccalaureate.

Finally, the petitioner submitted his Bachelor of Education from [redacted]. While issued in 1994, it is the petitioner's burden to document the necessary five years of post baccalaureate experience. The regulation at 8 C.F.R. § 204.5(g)(1) states that evidence of experience "shall" consist of letters from employers. The petitioner did not submit such evidence documenting five years of post baccalaureate experience as of the date of filing. Moreover, the petitioner did not submit an evaluation of the [redacted] degree explaining the U.S. equivalency of this foreign degree. Notably, the petitioner only submitted transcripts for three years of coursework. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). Thus, the petitioner has not documented that his Bachelor of Education is a foreign equivalent degree to a U.S. baccalaureate.

On appeal, the petitioner asserts that his employer hired him because of his "exceptional abilities" but has never explained how he meets at least three of the regulatory requirements for aliens of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Rather, he has always argued that he qualifies for the classification sought as an advanced degree professional.

In light of the above, the petitioner has not established his eligibility for the classification sought. Nevertheless, in the interest of thoroughness and because it was the director's sole basis of denial, the AAO will consider the request for a waiver of the alien employment certification process in the national interest.

National Interest Waiver

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The use of the term "prospective" requires future contributions by the alien, rather than to facilitate the entry of an alien

with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, Swahili education. In response to the director's request for additional evidence, the petitioner asserted that the proposed benefits will be national in scope. Specifically, he stated that foreign language education in general is in the national interest and that Swahili is "among the languages on the Department of Defense's Strategic Language List." The record supports this assertion. The petitioner further asserted that he will participate in the [redacted] The petitioner asserted this Title VI program receives funding from the U.S. Department of Education. Finally, the petitioner asserted that while he teaches at two [redacted] institutions, his students come from all over the United States and foreign countries and participate in an exchange program at the [redacted] where they represent "the national interests of the United States."

NYSDOT, 22 I&N Dec. at 217, n.3, provides the following discussion of occupations where the benefits are not national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id.

The argument that teaching Swahili serves the national interest goes to the substantial intrinsic merit of the petitioner's work, not whether a single teacher provides benefits that are national in scope. While the petitioner's students may come from various locations, it remains that the impact of a single teacher is so attenuated at the national level as to be negligible.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. In the director's final decision, she stated that the petitioner had not established his influence on the field of foreign language education. On appeal, the petitioner states: "if the petitioner's proposed employment is an area of substantial merit and that the benefit will be national in scope, then the petitioner's influence cannot be limited to 'the walls of the schools where he has worked.'" The petitioner misunderstands the final issue set forth in *NYSDOT,* 22 I&N Dec. at 218-23. Even if the AAO agreed with the director that the *proposed* benefits are national in scope, simply working in an occupation where the

benefits can be national in scope does not create a presumption that the petitioner has a "past history of demonstrable achievement with some degree of influence on the field as a whole." *See id.* at 219, n.6.

The petitioner has submitted evidence establishing the importance of teaching Swahili in the United States and the need for more Swahili teachers. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the position sought. In other words, U.S. Citizenship and Immigration Services (USCIS) generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner initially submitted a letter from [redacted] affirming that the petitioner "has been a valuable member" of [redacted], whose members present their countries and cultures in the community. This letter does not address the petitioner's work as a teacher of Swahili.

Second, the petitioner submitted several certificates. The Certificate of Participation for Linking All Types of Teachers to International, Cross-cultural Education (LATTICE) 2005-2006 does not specify the petitioner's level of participation. The petitioner also submitted a "Responsible Conduct of Research" certificate from [redacted] This certificate recognizes the ethical conduct of research rather than the ultimate impact of the research. In addition, the petitioner submitted a Certificate of Attendance for a national seminar of Kiswahili professionals offering "intensive refresher courses in Kiswahili Studies." This certificate simply demonstrates additional training in the occupation. Further, the petitioner submitted a foreign language certificate with no accompanying translation. The petitioner must attach a complete certified translation for every foreign language document. 8 C.F.R. § 103.2(b)(3). The record also includes a Certificate of Appreciation from the [redacted] for "Dedicated Service as Kiswahili teacher." This certificate constitutes local employer recognition. These certificates do not demonstrate the petitioner's influence on the field of foreign language education.

The remaining certificates do not relate to the petitioner's area of proposed employment. Specifically, the petitioner submitted a Certificate of Merit from the Chairman of [redacted] and the District Education Officer for [redacted]. The certificate recognizes that the petitioner "has successfully attended Practical and Theoretical Instructions on Theatre Techniques and skills during a District Drama Workshop." The petitioner does not explain how this certificate relates to his ability to teach Swahili as a foreign language. Similarly, the petitioner submitted a merit certificate relating to his participation in a volleyball clinic. This document has no relevance to the petitioner's activities as a Swahili teacher.

Third, the petitioner submitted an unpublished foreign language manuscript. As the record does not establish that this manuscript appeared in a trade journal or other evidence of its wide dissemination, the record does not demonstrate how it could have influenced the field. Even if published, the petitioner would need to demonstrate its ultimate influence or application in the field.

Finally, the petitioner initially submitted Email correspondence from various schools discussing their interest in offering Swahili courses. This correspondence does not address the petitioner's personal accomplishments in that field.

On May 18, 2009, the director advised the petitioner of the legal requirements for the benefit sought and requested additional evidence. In response, the petitioner submitted his self-serving curriculum vitae. This document, without supporting evidence, cannot establish the petitioner's accomplishments in the field. The petitioner also submitted job offers dated after the date of filing. As noted by the director, the petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

[redacted] an associate professor at [redacted] affirms the importance of teaching Swahili but does not identify the petitioner's specific accomplishments in this field. Officials at [redacted] acknowledge the receipt of five paperback books from the petitioner. The petitioner's donation of materials to the college, while generous, is not an example of his accomplishments as a teacher of Swahili.

The petitioner submitted evidence of his membership in Rotary International. The record does not reflect that Rotary International is a Swahili, foreign language, or education association that recognizes accomplishments in those fields. Moreover, professional memberships are one type of evidence that may be submitted to demonstrate exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *NYSDOT,* 22 I&N Dec. at 222.

The petitioner also submitted a March 5, 2009 letter from the [redacted] accepting the petitioner's paper for presentation. This letter postdates the filing of the petition and cannot establish eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of*

Katigbak, 14 I&N Dec. at 49. Moreover, as stated above, merely disseminating research is not evidence that the research is ultimately influential. More persuasive is evidence that the research was subsequently cited or otherwise utilized in the field.

Ultimately, while the petitioner may be a qualified and experienced Swahili teacher, he has not established his influence in the field. For example, the record lacks evidence that he has authored influential curricula or authored well cited articles in the field. The petitioner's qualifications to teach Swahili can be enumerated on an application for alien employment certification. Thus, the record lacks evidence that waiving that process is in the national interest.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.